

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Second Periodic Review of the	)	MB Docket No. 03-15
Commission's Rules and Policies	)	
Affecting the Conversion	)	RM 9832
To Digital Television	)	
To: The Commission		

**PETITION FOR RECONSIDERATION**

Nexstar Broadcasting, Inc. ("Nexstar"), by its attorneys, respectfully submits this Petition for Reconsideration of the Commission's recent Report and Order in the *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, FCC 04-192 (rel. Sept. 7, 2004) ("*Report and Order*"). Nexstar requests that the Commission reconsider and extend the replication/maximization deadlines established in the *Report and Order*.

**I. INTRODUCTION.**

Nexstar currently owns and operates 26 TV stations in 25 markets, and has Commission consent to acquire an additional station (KLST(TV), San Angelo, Texas), for which a closing is anticipated in November 2004.<sup>1</sup> Nexstar's television stations are in Designated Market Areas ("DMA") #53 and smaller and are all operating with digital low power special temporary authorizations pursuant to the policies adopted in the Commission's Memorandum Opinion and Order on Reconsideration, *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*.<sup>2</sup> Seven of Nexstar's stations are located in a top-100 DMA (excluding

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<sup>1</sup> In addition, Nexstar has pending an application for assignment of licenses to acquire television stations KFTA-TV, Fort Smith, Arkansas and KNWA-TV, Rogers, Arkansas. If the Commission consents to this transaction, Nexstar will own and operate 29 television stations in 27 markets.

<sup>2</sup> 16 FCC Rcd 20594 (2001). Nexstar's station WHAG-TV, Hagerstown, Maryland, is technically in the Washington, DC market, DMA #8, but actually serves the Hagerstown "sub-market" within this DMA. In 1998 the Commission recognized that this station does not provide service to the Washington, D.C. metropolitan area and has categorized the station as a "remaining market station" for regulatory fee purposes.

WHAG-TV) and are affiliated with ABC, CBS, Fox or NBC. Thus, under the adopted replication/maximization deadlines, Nexstar must initiate full-power operations for these seven stations in less than 10 months. Likewise, the current deadlines will require Nexstar to place at least an additional 18 stations on the air with full-power digital facilities in less than 22 months.

Nexstar, and many other broadcasters, will face significant challenges in complying with deadlines of July 1, 2005 and July 1, 2006 for replication/maximization of their digital facilities. These deadlines impose a substantial financial burden on medium and small market broadcasters such as Nexstar. In addition, it is not logistically possible for all broadcasters to construct their replicated/maximized facilities by the specified deadlines because there are only a limited number of available tall-tower crews available to perform the necessary tower work. Therefore, Nexstar urges the Commission to adopt a more gradual set of deadlines, which will allow broadcasters the time necessary to plan for the conversion, obtain needed funds and accomplish the tower upgrades required for construction of their replicated/maximized facilities. Furthermore, adoption of a more graduated set of deadlines will not unduly harm the DTV transition.

## **II. THE ADOPTED REPLICATION/MAXIMIZATION DEADLINES WILL IMPOSE A HEAVY FINANCIAL BURDEN ON BROADCASTERS.**

The FCC's replication/maximization deadlines will impose substantial and immediate financial costs on many small and medium market broadcasters – costs these stations are ill-equipped to pay. Nexstar estimates that most broadcasters must spend at least \$500,000 to convert from low-power digital stations operating pursuant to special temporary authority to fully replicated or maximized digital facilities. And for stations not yet operating with low-power authorizations the required expenditure will be larger. For example, the cost of converting Nexstar's stations to full-power digital operations will be more than \$1 million per station, with expenditures in excess of \$1.5 million needed for the majority of its stations. Nexstar estimates

that it will have to spend approximately \$13 million by July 1, 2005 to initiate replicated or maximized operations for its top-100 network affiliated stations (excluding WHAG-TV). And Nexstar will be required to spend an approximate additional \$30 million before July 1, 2006 for its remaining stations to meet the replication/maximization deadline.<sup>3</sup> Nexstar notes that the above expenditures do not include the \$800,000 to \$1.5 million Nexstar is already committed to spend to initiate dynamic PSIP by February 1, 2005 to meet the newly adopted dynamic PSIP deadline.<sup>4</sup>

For most broadcasters, including Nexstar, generating funds of this magnitude will require extensive and careful budgeting and planning – something not possible in the short time allowed by the Commission’s deadlines. In fact, the 10 months in which Nexstar must place its top-100 DMA stations at full-power digital operations do not provide the necessary time for budgeting a \$13 million expenditure let alone determining how to achieve the entire \$43 million required investment in less than two years. Even if Nexstar were not operating with a net loss, an expenditure of this size clearly cannot be funded out of cash flow.<sup>5</sup> As for alternate funding mechanisms, Nexstar does not know whether it will be able to obtain the required funding from any outside source, whether by loans from its senior lenders or through the issuance of bonds or stock. Consequently, an unplanned expenditure of the magnitude mandated by the Commission’s deadlines is not feasible for Nexstar. Nexstar does not believe it is not alone in facing significant financial difficulties in meeting the established deadlines: 17 percent of all commercial stations

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<sup>3</sup> If the Commission approves the pending application for consent to the assignment of licenses of KFTA-TV and KNWA-TV to Nexstar, this will add an additional \$2,900,000 expenditure for the July 1, 2006 deadline.

<sup>4</sup> *Report and Order* at ¶ 152.

<sup>5</sup> In the first nine months of 2004 Nexstar has had net loss of more than \$15 million.

and 23 percent of all noncommercial stations have not initiated even special temporary authority operations, many for financial reasons.<sup>6</sup>

Although the *Report and Order* states the Commission will consider requests for waivers for stations that are unable to meet the deadlines, the inherent uncertainty in a waiver process makes this an inadequate solution. Waivers will only inject further uncertainty into already short budgeting and planning processes. Broadcasters will not know whether their waiver requests will be granted, and even if the Commission does grant a waiver it is only for six months – at which time a further request for waiver must be filed, which may or may not be granted. Without knowing if the waiver will be granted and for how long, stations are not able to know by what date full-power operations must be initiated. Thus, broadcasters will be only guessing as to when they must incur the very massive required expenditures. This ultimately harms not only planning for constructing full-power DTV facilities but also planning for all other capital expenditures. Further, a waiver process in this instance will take substantial Commission resources due to the high number of waiver requests that will be submitted – resources that could be better focused on other matters, such as DTV must carry, unresolved border interference issues and timely completion of the now-mandated DTV channel election process. Therefore, Nexstar urges the Commission to adopt a longer period for stations to construct their replicated or maximized DTV facilities.

### **III. THE ESTABLISHED REPLICATION/MAXIMIZATION DEADLINES ARE NOT LOGISTICALLY POSSIBLE.**

As of July 28, 2004, there are 789 DTV stations operating at low power under special temporary authority and 299 stations that have not yet initiated any digital operations.<sup>7</sup> To initiate operations of full-power replicated or maximized facilities, many broadcasters, including

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<sup>6</sup> *Report and Order at Appendix D-1.*

<sup>7</sup> *Id.*

Nexstar, must upgrade their towers or have new towers built in order to install the required equipment. Nexstar is aware of only a few tall tower crews which are capable of performing the necessary tower upgrades and/or building new towers. As a result, Nexstar estimates that even if only 80 percent of the stations not yet operating DTV facilities or operating with low-power DTV facilities require tower work before installing full-power DTV equipment, it will take at least five years (excluding weather delays) for all necessary tower upgrades to be completed. Consequently, even if funding is not an issue, numerous stations nonetheless will be unable to initiate full-power digital operations by the required dates.

#### **IV. MORE GRADUATED FULL-POWER DEADLINES WILL ALLOW MOST BROADCASTERS TO MEET THE DEADLINES.**

The comments submitted by MSTV and the National Association of Broadcasters in this proceeding suggested that the Commission set the interference protection deadlines at the end of the transition.<sup>8</sup> Other broadcasters, including Belo, CBC, Hubbard, Paxson, Sinclair and NBC/Telemundo, suggested or supported the MSTV/NAB approach.<sup>9</sup> Nexstar urges the Commission to adopt this proposal because these are the parties that are bearing the burden of constructing full-power digital facilities and are in the best position to determine realistic deadlines. Furthermore, an end-of-the-transition approach does not reject a final deadline, while providing all broadcasters with essential time to acquire or set aside the necessary funding, obtain equipment and schedule installation. If, however, the Commission determines that setting an end-of-transition deadline is not acceptable, establishing a longer and more graduated set of deadlines will allow broadcasters much needed additional time to raise funds and achieve full-power operations without seeking numerous waivers. A more reasonable set of deadlines might

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<sup>8</sup> *Report and Order* at ¶ 75.

<sup>9</sup> *Id.* at fn. 165.

be for the Commission to require network affiliated stations in the top-75 markets to begin operating replicated or maximized facilities within one year of its decision on reconsideration, and then add 25 additional markets at six-month intervals, with a requirement that all stations, except stations permitted to flash-cut to digital operations, be broadcasting a full-power digital signal three months before the Commission's not-yet-set date for termination of analog broadcasts. Under this more gradual construction plan many broadcasters should be able to meet the new deadlines without undue hardship.

**V. ALLOWING A LONGER PERIOD TO INITIATE FULL-POWER DTV OPERATIONS WILL NOT HARM THE DTV TRANSITION.**

A slower transition to full-power DTV operations will not unduly harm the DTV transition. In setting the replication/maximization deadlines, the Commission states that DTV receiver penetration has dramatically changed since 2001 and therefore it is not appropriate to further postpones setting replication/maximization deadlines.<sup>10</sup> The Commission references the predictions of the Consumer Electronics Association for DTV tuner penetration and its own decisions adopting a tuner mandate and plug-and-play cable-ready sets. However, CEA's predictions are misleading. For example, the CEA predicts that by the end of 2006 there will be approximately 35 million digital tuners in use.<sup>11</sup> However, the average price of these tuners is still more than \$1,000. Thus, it is very likely that these tuners will be in households that are more likely to be viewing DTV signals via cable and satellite rather than over-the-air, and therefore these households do not need a station to be operating at full-power in order to receive DTV signals. Further, the Commission's own rules will not even require the most affordable

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<sup>10</sup> *Report and Order* at ¶ 80. Nexstar is not asking the Commission to reconsider its decision to set replication/maximization deadlines; rather Nexstar requests the Commission set those deadlines for a later time.

<sup>11</sup> *Id.* at ¶ 17-18; *See also* [http://www.cc.org/publications/books\\_references/digital\\_america/video/dtv\\_numbers.asp](http://www.cc.org/publications/books_references/digital_america/video/dtv_numbers.asp).

television sets to have DTV tuners until July 1, 2007 – one year after stations are currently required to be operating at full-power.

Likewise, the Commission relies on the CEA's prediction that by 2010 (a date at least three years later than the currently established replication/maximization deadline), more than 85 million American homes will have DTV tuners.<sup>12</sup> Perhaps this is an accurate estimate, but with more than 105.5 million homes in the United States this means at least 20 million households will be operating with analog only television sets.<sup>13</sup> Moreover, it is these 20 million households that are most likely to need stations to be broadcasting full-power, over-the-air digital signals. Accordingly, it makes no sense to force broadcasters to spend millions of dollars in less than 22 months to achieve full-power broadcasts that at least 20 million households will not be viewing four years hence.

Finally, revising the maximization and replication time line imposes no burdens on stations already operating at full power. Such broadcasters made the voluntary choice to implement full-power broadcasts before the deadline. Their decision to do so should not be determinative of the deadlines that are being set for other broadcasters.

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<sup>12</sup> *Order* at ¶ 80.

<sup>13</sup> U.S. Census Bureau fact sheet, *Housing Characteristics: 2000, October 2001*, available at <http://www.census.gov/prod/2001pubs/c2kbr01-8.pdf>. The number of homes with analog only sets in 2010 is likely to be even higher, as this number does not account for population growth.

## **VI. CONCLUSION.**

For the foregoing reasons, Nexstar respectfully urges the Commission to reconsider and extend the replication/ maximization timelines mandated in its Report and Order.

Respectfully submitted,

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